

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

January 26, 1999

ORDER ON RECONSIDERATION

NEW HARBOR-CHAMBERLAIN WATER
ASSOCIATION, Request for
Approval of Transfer of Assets
From New Harbor Water Company
to the new Harbor-Chamberlain
Water Association

Docket No. 98-689

NEW HARBOR WATER COMPANY,
Request to Abandon Service

Docket No. 98-139

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY OF ORDER

We find no basis to modify our December 15, 1998 Order.

II. BACKGROUND

On December 31, 1998, Paul Ring current owner of the New Harbor Water Company, New Harbor Water Company, Inc., and the Waldoboro Water Company, filed a request for reconsideration of our December 15, 1998 Order in Docket Nos. 98-689 and 98-139.¹ In that order, we approved the transfer of assets from the New Harbor Water Company to the New Harbor-Chamberlain Water Association and allowed the New Harbor Water Company to abandon service as a public utility.²

These cases began on February 20, 1998 when Mr. Ring filed with the Commission a letter addressed to his customers stating that due to his health, he was no longer able to maintain or operate the water utility. In the letter, Mr. Ring asked

¹The petition caption also bears the names and docket numbers of several other Commission dockets involving Mr. Ring's utilities: 96-169, 96-181, 96-449, 98-096, and 98-140. This order addresses Docket Nos. 98-139 and 98-689 because the petition is timely for and specifically seeks reconsideration of our December 15, 1998 Order issued in Docket Nos. 98-139 and 98-689. The 20-day time period for seeking reconsideration of our orders in the other listed dockets had expired prior to Mr. Ring's filing of this request for reconsideration.

²On January 11, 1999, Mr. Ring filed an appeal of our December 15th Order with the Maine Supreme Judicial Court (Law Docket No. PUC-99-20). Pursuant to Maine Rules of Civil Procedure, Rule 73(a) & 73(f), we retain jurisdiction to consider this timely motion for reconsideration.

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customers to support the transfer of the system to a consumers water association to ensure its continued operation in the coming season. Mr. Ring filed the letter as his official request to allow the New Harbor Water Company to abandon service. The Commission assigned this request Docket No. 98-139.

During the summer of 1998, the New Harbor Water Company consumers began negotiating with Mr. Ring for the sale of the water system to them and formed a water users association to operate the water system on behalf of its users.

On August 18, 1998, the New Harbor-Chamberlain Water Association (the Association) filed a request for approval of the transfer of assets of the New Harbor Water Company to the Association. The Association included in the filing a copy of a Purchase & Sale Agreement executed on August 11, 1998 by both Mr. Ring and the President of the Association, Patricia Cliney.

In our Order issued on December 15, 1998, we determined that the transfer was in the best interests of the ratepayers and the utility, approved the transfer of assets, and allowed the New Harbor Water Company to abandon its service obligations.

III. ISSUES RAISED ON RECONSIDERATION

In the petition for reconsideration, Mr. Ring raises two issues: 1) he complains about the Commission approval of the transfer, implying that he did not consent to it and/or that the Commission process was unfair; and 2) he requests that the Commission award relocation assistance pursuant to Title 1 of the Maine Revised Statutes Annotated (M.R.S.A.) sections 901 and 951 et seq. and 42 United States Code (USC), chapter 61. We consider these issues herein in an effort to properly assess Mr. Ring's objections to our actions in these dockets.

A. Fairness of Our Approval of Transfer of Utility Assets

The petition states:

Neither PUC docket 98-139 or 98-689 were joint petitions as was 98-140, 96-169 & 96-181. The Commission's 15 December Order was yet another action to deprive the Appellants of their Constitutional, due process and property rights as well as their civil and human rights.

Petition at 1.

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While it is not clearly indicated, these statements suggest that Mr. Ring objects to our procedure in these dockets, and does not approve of the transfer of assets from the New Harbor Water Company to the New Harbor-Chamberlain Water Association or agree that the New Harbor Water Company should be allowed to abandon service.

1. Procedure

Our process was ordinary. We received a request for approval of a transfer of assets with a supporting purchase and sale agreement executed by both parties to the transaction. Staff examined the details of the proposed transfer, and inquired more fully into the nature of the entity which proposed to purchase the utility assets and serve its customers. We reviewed the information provided by the association and the utility and, finding it to be in the public interest, approved the transaction.

Mr. Ring was a full party to the proceeding and was sent copies of all Commission communications. At no time did Mr. Ring object or indicate any disagreement with the conduct of the proceeding or the information provided by any party, including the fully executed purchase and sale agreement containing his signature. Mr. Ring has not articulated any specific basis upon which he disagrees with the process. Our review of the process shows it to be a fair one.

2. Substance

We also fail to understand how Mr. Ring could object to our approval of the sale and his request to abandon service. Indeed, the premise that Mr. Ring does not consent to the transfer of the assets of the New Harbor Water Company to the New Harbor-Chamberlain Water Association or agree that the New Harbor Water Company should be allowed to abandon service is totally contrary to the record and Mr. Ring's own actions throughout these proceedings and the recent history of the New Harbor Water Company. We will enumerate these to make the basis for our decision clear.

First, on February 20, 1998, Mr. Ring personally delivered to the Clerk of the Commission a copy of his January 1998 letter asking his customers to take charge of the operation of the New Harbor system because he and his wife were no longer able to do so. The Clerk assigned Docket No. 98-139 to the filing presented by Mr. Ring, bearing the reference "Paul Ring dba NHW Termination of Service."

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Furthermore, the letter itself urged New Harbor Water Company's customers to lend their support for the continued operation of the system for the upcoming season. Mr. Ring's failure to turn on and operate the water system during April and May was another clear indication that Mr. Ring did not wish to continue providing utility service.³ His subsequent consent to turn on the system, allowing members of the water users association to operate it during the summer of 1998, was further confirmation of the wishes expressed in his January 1998 letter.

Finally, Mr. Ring's signature on the Purchase and Sale Agreement provides Mr. Ring's clear and legally authoritative consent to the transfer of utility assets.

In sum, there is nothing in the record, in the petition, or in the recent sequence of events around this troubled utility to indicate why Mr. Ring now objects to our approval of the transfer of New Harbor Water Company assets under the terms of the agreement that Mr. Ring approved, as evidenced by his signature. Similarly, there is no basis for Mr. Ring's objection to our unconditional approval of his request to be allowed to abandon the service obligations of the New Harbor Water Company on the existing record, the petition, or recent events.

B. Request for Relocation Assistance

We turn now to Mr. Ring's request

for the administration of relocation assistance per joint application and approved as 96-181 and again as 98-140, as well as 96-169 but as yet denied by the Appellants by the Commission and the State of Maine as provided at 1 MRSA §901 et seq.; 42 USC Ch 61; and/or 1 MRSA §951 et seq.

Petition at 1.

³See *Order to Provide Service* dated May 1, 1998 in which we ordered Mr. Ring -- then tardy in this regard by one month under his filed terms and conditions of service and presenting hardship to customers -- to turn on and operate the New Harbor Water Company water system for the 1998 season. See also, *Emergency Order* dated May 1, 1998, issued by the Department of Human Services, ordering Mr. Ring to immediately turn on and operate the water system "in order to avert a public health threat and to ensure potable water is maintained in the New Harbor Water Company's distribution system."

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Mr. Ring's various communications with the Commission have frequently mentioned his desire for an award of federal relocation assistance. However, Mr. Ring has not articulated why he believes these provisions are applicable to the transactions at issue or why he believes it is within the jurisdiction of, and incumbent upon, this Commission to apply them.

We have had no prior experience with these provisions, their having never been raised in the context of a public utility matter. Having reviewed the statutes cited by Mr. Ring in his petition for reconsideration, we note that they do not appear to apply in a situation where a utility agrees to sell its assets as did New Harbor Water Company. For instance, the Maine statutes regarding relocation assistance state:

The purpose of this chapter is to establish a uniform policy for the treatment of **persons displaced as a result of federally assisted state programs** designed for the benefit of the public as a whole, and to enable the State to comply with certain laws enacted by the Congress of the United States.

1 M.R.S.A. § 901. Purpose (emphasis added)

Our understanding is that these provisions apply to federal agencies or state agencies acting under federal statutes, acquiring property for a governmental program or project, resulting in displacement of a person or business. These are not the circumstances of Mr. Ring's sale of the New Harbor Water Company assets, which was fully negotiated among private parties without involvement of federal or state agencies sponsoring federal programs or projects.⁴

⁴We do not believe we have jurisdiction to address the issue of whether Mr. Ring is entitled to federal relocation assistance in the context of the court-ordered sale of the Waldoboro Water Company, a matter now on appeal before the Maine Supreme Judicial Court. See Law Docket No. Ken-98-215. Nor did we require Mr. Ring to sell the Hartland Water Company to Consumers Maine Water Company in 1996. See *Consumers Maine Water Company, Application for Approval of Transfer of Hartland Water Company*, Docket No. 96-181, Order Approving Stipulation and Authorizing Transaction (June 1996). While we can understand Mr. Ring's desire for a comprehensive resolution of the transfer of all of his utilities, the transactions have occurred separately and involve various distinct agencies, courts, municipalities, and corporations.

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IV. CONCLUSION

We determine not to modify our December 15, 1998 order or to take any further action on this matter.

Dated at Augusta, Maine this 26th day of January 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
DIAMOND

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.